IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.15868 of 2003
Date of decision 26 .10.2006

Satbir .. petitioner

Versus

HUDA and others .. Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR
HON'BLE MR. JUSTICE M.M.S. BEDI

PRESENT: Mr.RK Hooda , Advocate for the petitioner
Mr.Aman Chaudhary, Advocate for respondent nos. 1 and 2

M.M.Kumar, J.

The prayer made in this petition filed under Article 226 of the Constitution is for quashing order dated 25.9.2003(AnnexureP.5) transferring the petitioner from Sub Division, Jind to Sub Division, Narnaul. It is not disputed that vide order dated 28.12.1994 the Chief Engineer, H.U.D.A., Manimajra has issued directions to maintain the seniority list of regular Mechanical Staff/ Regular worked staff at Circle level. It also remains undisputed that the petitioner had earlier filed CWP No. 15778 of 2001 challenging similar transfer orders from Hisar to Faridabad. It was noticed that the petitioner is working as T.Mate with the respondent and is posted in Hisar Circle which comprised of districts of Jind, Bhiwani, Hisar, Fatehabad and Sirsa. The order of transfer was quashed and it was found that transferring the petitioner would result into inter cadre transfer out of Hisar circle. The operative part of the order dated 28.8.2002 passed by the Division Bench in the case of the petitioner itself reads as under:

> " After considering the matter we are of the view that the transfer of the petitioner outside his cadre without his consent

materially affects his seniority. The same cannot be said to be justified. This Court in Bahadur Chand v. State of Haryana and others 1995(2) RSJ 490, held that a transfer which changes the cadre of the employee could not have been done by the respondents except with the consent of the employee.

In Bahadur Chand's case (supra), the petitioner therein was transferred from the post of Assistant to that of Store keeper without his consent and accordingly his transfer was quashed being outside his cadre. The learned Single Judge, placed reliance on the judgement of the Hon'ble Supreme Court in Jawahar Lal Nehru University v. K.S. Jawalkar 1989(3) SLR 730, wherein it was held that change of cadre of an employee cannot be effected except with his consent.

In the present case the petitioner had not consented to his transfer from one cadre to another. The stand of the respondents based on the instructions dated 9.9.1981 (Annexure R/1) and12.5.1991(Annexure R/2) is hardly tenable. The instructions, infact, provide for Economy in Expenditure and non payment of transfer travelling allowance on transfer at the request of a government employee. It is provided therein that transfer ordered on request of same relative of the Government employee or on the recommendations of some member of Parliament or member of the State Legislature or in other similar circumstances (unless it is explicitly stated as being on a complaint) shall be treated as transfer on the request of the Government employee and transfer TA shall not be paid.

> The intent of these instructions is that when the transfer is on the request of the employee with recommendations of the persons mentioned in the instructions, then it is to be treated as a transfer on the request of the employee and that no transfer travelling allowance is payable. As already noticed, in the present case the transfer has been effected without the consent of the petitioner. Rather the petitioner has assailed his transfer from HUDA circle Hisar to HUDA circle Faridabad. This transfer also affects the seniority of the petitioner, which causes serious prejudice to him.
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> In view of the above, this writ petition is allowed and the impugned order dated 25.9.2001 Annexure P.3 is quashed. No costs."

The respondents have repeated the same illegality by again transferring the petitioner from Hisar Circle to Narnaul Circle which is outside the afore-mentioned circle. Such a course is not available to the respondents in view of the view taken by the Division Bench in the case of the petitioner itself.

In view of the above, the writ petition is allowed and the order dated 25.9.2003(Annexure P.5) ,which has already been stayed by this Court, is hereby quashed qua the petitioner.

(M.M.Kumar)
Judge

(M.M.S.Bedi)
Judge

26.10.2006

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